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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/792,351	03/03/2004	Diana Lynne Gann	9567	4523

27752 7590 12/11/2007  
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CINCINNATI, OH 45224

EXAMINER
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BOGART, MICHAEL G

ART UNIT	PAPER NUMBER
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3761

MAIL DATE	DELIVERY MODE
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12/11/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/792,351

Applicant(s)

GANN ET AL.

Examiner

Michael G. Bogart

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 September 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 14-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 March 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 05 September 2007 has been entered.

### ***Claim Rejections – 35 USC § 103***

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. § 103(c) and potential 35 U.S.C. § 102(e), (f) or (g) prior art under 35 U.S.C. § 103(a).

Claims 14-25 are rejected under 35 U.S.C. § 103(a) as obvious over Buck *et al.* (US 6,254, 566 B1)(Hereinafter "Buck").

Regarding claim 14, Buck teaches a tampon (40) and a tampon applicator (20) in combination for expulsion of said tampon (40) into a vaginal cavity of a female user, comprising:

said tampon applicator (20) comprising a tampon holder tube (22) and a plunger (25);

said tampon holder tube (22) comprising a hollow interior portion, an interior surface (22A), an exterior surface (22B), a longitudinal axis (42), an outer perimeter, a first end (24) dimensioned for insertion into said vaginal cavity, a second end (21) positioned oppositely to said first end (24);

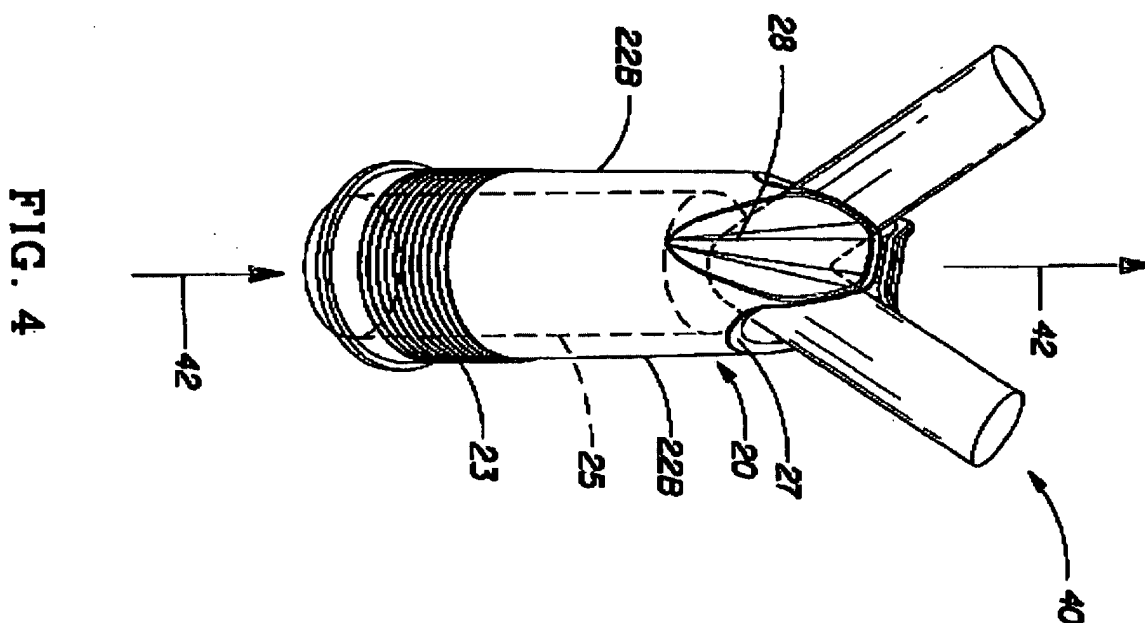
an end expulsion force increaser (28) and at least one side expulsion member (26, 27) positioned at said first end (24) of said tampon holder tube (22), said tampon (40) being housed within said hollow interior portion of said tampon holder tube (22) in a pre-expelled position;

said tampon (40) comprising a fluid permeable bag and absorbent material loosely dispersed within said permeable bag, wherein said fluid permeable bag tampon comprises fibers, said tampon (40) being housed within said hollow interior portion of said tampon holder tube (22) in a pre-expelled position; and

wherein an axial force to expel said tampon (40) from said tampon holder tube (22) has a inherently greater axial force to expel said tampon (40) from said reinforced end expulsion force increaser (28, 30) than from said side expulsion member (26, 27)(see fig. 4, *infra*).

Buck teaches that the tampon includes Tampax Regular absorbency core material and a polypropylene overwrap (col. 13, line 40-col. 15, line 57). Such overwraps are known in the art to be permeable so as to permit absorption by the tampon's core (see, e.g., Donohue, US

3,628,534, col. 3, lines 63-76; Etheredge *et al.* US 5,928,184 A, col. 5, lines 34-48). Tampax tampons include cores which consist of cellulosic and/or rayon fibers and absorbent additives dispersed in such overwraps (see, e.g., Donohue, col. 1, line 39-col. 2, line 28; Etheredge *et al.*, col. 5, lines 16-33).



Regarding the functional limitations, apparatus claims must be structurally distinguishable over the prior art. MPEP § 2114. As far as the plunger being adapted to expel the tampon through the end expulsion force increaser, if sufficient force is applied to the plunger, this may be accomplished.

Buck does not teach the specific degree of deformability of the tampon.

Optimization of ranges of intrinsic properties such as deformability within prior art conditions or through routine experimentation is not sufficient to patentably distinguish the invention. *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). MPEP § 2144.05.

A particular parameter must first be recognized as a result-effective variable, i.e., a variable which achieves a recognized result, before the determination of the optimum or workable ranges of said variable might be characterized as routine experimentation. *In re Antonie*, 559 F.2d 618, 195 USPQ 6 (CCPA 1977).

At the time of the invention, one of ordinary skill in the art would have recognized the competing interests of increasing softness and deformability of a tampon to improve user comfort versus making the tampon sufficiently firm or resilient so that it retains in shape sufficiently during use.

Regarding claim 15, Buck teaches a side expulsion member (26, 27) that has an internal dimension that is capable of increasing to a deployed width as the plunger (25) expels the tampon (40) from the holder tube (22).

Claim 16 is interpreted herein as depending from claim 14. Further regarding claim 16, Buck teaches a plurality of side expulsion zones (26).

Regarding claims 17, 18 and 22, Buck teaches that the end expulsion force increaser causes the tampon (40) to simultaneously shorten and expand because it resists forward movement of the tampon (40) until it reaches a breaking point where tampon is forced forward by plunger (17).

Regarding claims 19-21, Buck teaches multiple slots, voids or weakened areas (26) at the first end of the tube (22).

Regarding claim 23, Buck teaches that the end expulsion force increaser (28) is a curved projection.

Regarding claims 24 and 25, Buck teaches that the axis of the tampon (40) reorients itself once it has been expelled.

### ***Response to Arguments***

Applicant's arguments filed 05 September 2007 have been fully considered but they are not persuasive.

Applicants assert that Buck does not teach a tampon comprising a fluid permeable bag, wherein the bag comprises one of the recited materials. This argument is not persuasive because Buck teaches that the tampon includes Tampax Regular absorbency core material and a polypropylene overwrap (col. 13, line 40-col. 15, line 57). Such overwraps are known in the art to be permeable so as to permit absorption by the tampon's core (see, e.g., Donohue, US 3,628,534, col. 3, lines 63-76; Etheredge *et al.* US 5,928,184 A, col. 5, lines 34-48). Tampax tampons include cores which consist of **cellulosic and/or rayon fibers** and absorbent additives dispersed in such overwraps (see, e.g., Donohue, col. 1, line 39-col. 2, line 28; Etheredge *et al.*, col. 5, lines 16-33) The term "loosely" is relative and not specifically defined by the specification and thus does not distinguish the claimed invention over Buck.

Applicants assert that Buck teaches a tampon that is semi rigid in contrast to the deformable tampon of the instant invention. This argument is not persuasive because Buck's tampon is indeed deformable, the only difference is the degree of deformability. As described in the detailed rejection supra, optimizing the deformability of the tampon is not sufficient to patently distinguish it over Buck.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bogart whose telephone number is (571) 272-4933.

In the event the examiner is not available, the Examiner's supervisor, Tatyana Zalukaeva may be reached at phone number (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300 for formal communications. For informal communications, the direct fax to the Examiner is (571) 273-4933.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Michael Bogart  
10 December 2007

TATYANA ZALUKAEVA  
SUPERVISORY PRIMARY EXAMINER

